



IN THE PROVINCIAL COURT OF SASKATCHEWAN

Citation: 2012 SKPC 058

Date: May 11, 2012
Ticket No.: 7263201
Location: North Battleford, Saskatchewan

Between:

Her Majesty the Queen

- and -

Dexter McNally

Appearing:

Ryan LaRose
Ivan Frank

For the Crown
For the Accused

JUDGMENT

D. J. O'HANLON, J

INTRODUCTION

[1] Mr. McNally is charged with driving without due care and attention contrary to s. 213(1) of *The Traffic Safety Act*, S.S. 2004, c. T18.1.

FACTS

[2] On October 1, 2011, at approximately 8:30 p.m., Mr. McNally was operating a Ford three-quarter ton truck northbound on 100th Street in the City of North Battleford, Saskatchewan. His vehicle was stopped at a red light at 13th Avenue when an R.C.M.P. vehicle approached Mr. McNally from behind in the same lane. The R.C.M.P. vehicle was equipped with a video camera that recorded the entire encounter.

[3] As the R.C.M.P. vehicle approached Mr. McNally's vehicle from behind, the street light turned green and Mr. McNally proceeded through the intersection still northbound on 100th Street. Mr. McNally was in the left-hand driving lane, closest to the double solid centre lines. As his vehicle proceeded through the intersection, a small red car was proceeding slightly behind Mr. McNally's vehicle in the northbound right-hand driving lane. As Mr. McNally's vehicle cleared the intersection, his passenger side tires were on the dotted line separating his lane from the lane occupied by the small red vehicle. The small red vehicle can be seen to steer to its right as Mr. McNally's vehicle is wandering towards his lane of travel. Mr. McNally's vehicle then wandered to the left-hand side of his lane, allowing the small red car to accelerate and move past Mr. McNally's vehicle.

[4] Mr. McNally's vehicle again wandered to the right of his lane as it was reaching the end of the block. As his vehicle approaches the 14th Avenue intersection, his vehicle moves to the left, as if steered to the left, and proceeds through the intersection. As the vehicle begins to cross the crosswalk on the north side of this intersection, the vehicle is steering to the right, however, the driver's side wheels are over one of the centre lines, even though the vehicle has already started to move to the right and back into its own lane. Consequently, it is obvious that Mr. McNally's vehicle wandered into the oncoming traffic lane as it drove through the intersection where there were no centre lines. An oncoming southbound vehicle can be seen going by Mr. McNally's vehicle in the opposite direction. This vehicle is slightly straddling the two southbound lanes. In other words, this vehicle had moved to its right and away from Mr. McNally's vehicle, although the southbound vehicle cannot be seen to swerve to its right, as Mr. McNally's vehicle blocks the view of the camera. Both Constables Benjamin and Moorhead testified to having seen that oncoming vehicle swerve to its right and out of Mr. McNally's path. I accept their evidence on this point.

[5] Throughout all of the above driving, a small glowing screen can be seen in the cab of the truck to Mr. McNally's right and slightly below his eye level.

[6] On all of the facts I am satisfied Mr. McNally's attention was more focused on the small

glowing screen than on his own driving and the traffic in the vicinity of his vehicle.

ISSUES

1. Has the Crown proven beyond a reasonable doubt that Mr. McNally was driving without due care and attention?
2. If a lesser offence under *The Traffic Safety Act* was made out, can the offence of driving without due care and attention prevail?
3. Does subsection 214(2) of *The Traffic Safety Act* provide a defence if the purpose of the small glowing screen was to assist the driver to navigate?

ANALYSIS

[7] In order to establish the offence of driving without due care and attention, the Crown must prove beyond a reasonable doubt that the defendant's manner of driving, viewed objectively, is a departure from the standard a reasonable and prudent driver would have observed in all of the circumstances. The Crown must show a sufficient departure from the standard of a reasonable and prudent driver to make the driving "deserving of punishment". See *R. v. Dookhun* (2010), 354 Sask. R. 43. In stating this standard of proof, Madam Justice Wilkinson cites the Ontario Court of Appeal decision in *R. v. Beauchamp*, [1953] O.R. 422 (Ont. C.A.), and several Saskatchewan cases that have followed the *Beauchamp* decision.

[8] Madam Justice Wilkinson goes on to state the offence of driving without due care and attention is a strict liability offence, meaning that the proof of the act of careless and inattentive driving establishes the offence regardless of intent. Due diligence is, of course, available as a defence for the accused to demonstrate on a balance of probabilities that he had taken all reasonable care in the circumstances. See *R. v. Kozun* (1997), 154 Sask. R. 81 (Q.B.).

[9] In the case at hand, no defence evidence was called. Consequently, due diligence does not have to be considered as a defence.

[10] I am satisfied the facts in this case do establish that Mr. McNally's manner of driving, viewed objectively, was a departure from the standard a reasonable and prudent driver would have observed in all the circumstances. The Crown has proven the case beyond a reasonable doubt.

[11] In making this determination, I have viewed on numerous occasions the video provided by the R.C.M.P. It is evident from that video that Mr. McNally's attention was not on his driving or the other traffic in the vicinity. His attention was focused on the small glowing screen in front of his face. Since he was not focusing his attention on his driving, I am satisfied on all of the evidence that two vehicles in his vicinity had to manoeuvre out of his way. His truck did cross the centre line, and weaved within his own lane several times. At one point, after the driver's side wheels on his vehicle crossed the centre line, he realized he was veering to the left and he quickly corrected by steering to his right.

[12] The R.C.M.P. video of the whole incident was extremely helpful in making a determination of the facts on this matter.

[13] The second issue to be considered is whether or not a less serious charge could have and perhaps should have been laid under *The Traffic Safety Act*. In the *Dookhun, supra*, decision, Madam Justice Wilkinson considered whether a charge under s. 228(1) of *The Traffic Safety Act* would have been more appropriate. That is the section cited by defence counsel in Mr. McNally's defence. I am satisfied, as was Justice Wilkinson, that even though a less serious offence was made out, the more serious offence of driving without due care and attention could stand.

[14] The third issue to be determined is whether subsection 214(2) of *The Traffic Safety Act* provides a defence. That section reads as follows:

241(1) No person shall operate or cause to be operated on a highway
a vehicle equipped with a television set, video screen or computer

screen unless:

- (a) the equipment is securely and safely mounted in the vehicle;
- (b) the equipment is located so that it does not obstruct the view of the driver; and
- (c) except as provided in subsection (2), any image that is displayed by the equipment is not visible to the driver.

(2) An image displayed on a television set, video screen or computer screen may be located so that it is visible to the driver if the image only displays information that is solely designed to assist the driver:

- (a) in the safe operation of the vehicle, or in ensuring the safety and security of its load or its passengers;
- (b) to navigate;

....

[15] Cst. Moorhead testified that upon stopping Mr. McNally he advised him he was being stopped for playing with his cell phone while driving. Mr. McNally's response, according to the officer, was that he was not using a cell phone but rather he was programming a friend's address into a GPS device while driving. The officer testified that Mr. McNally then reached down beside himself and produced a GPS device that was now turned off. No objection was taken to this evidence at trial.

[16] Does the above information, even though it was not proffered by the accused as a "due diligence" defence, provide a defence to Mr. McNally's actions? In considering the section as a whole, I have to conclude that it does not. Subsections (1) and (2) of section 241 have to be read conjunctively. Subsection (1) requires the equipment to be securely mounted in the vehicle; the equipment must be located so as not to obstruct the view of the driver; and, subject to the exceptions in subsection (2), the image displayed by the equipment must not be visible by the driver. Even if it could be argued under subsection (2), that the image displayed on the screen of the GPS was solely designed to assist the driver to navigate, the equipment was not securely and safely mounted in the vehicle. As to whether the GPS device obstructed Mr. McNally's view, does not have to be decided.

[17] I therefore, find Mr. McNally guilty of the offence of driving without due care and attention pursuant to subsection 213(1) of *The Traffic Safety Act*.

D. J. O'Hanlon, J